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T.R.A. DOCKET ROOM

May 3, 2005

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No 04-00381

Dear Chairman Miller

This letter briefly responds to the letter filed by Cinergy Communications dated April 29, 2005, which enclosed a copy of a Kentucky filing made by Cinergy. BellSouth will respond to Cinergy's Kentucky filing in due course in that state, however, Cinergy's motion highlights an issue that BellSouth has raised repeatedly in this docket.

Specifically, as BellSouth indicated in its March 30, 2005 response to the Joint Petitioner's Motion to Bifurcate, a number of legal issues are pending in this docket that should be addressed prior to time the parties file testimony. As BellSouth indicated in that pleading, Section 271, and whether a state commission has any authority to address Section 271 issues, is a perfect example of the type of legal question that should be addressed at the outset of this docket. The CLECs have generally resisted every effort to have these legal issues determined in advance of the evidentiary portion of this case.

BellSouth is not entirely sure why Cinergy has provided the Authority with a copy of its Kentucky filing given the CLECs agreement during the May 2, 2005 status conference that BellSouth could file motions on threshold legal questions during the 90 day "quiet period." However, the Cinergy filing clearly demonstrates the correctness of BellSouth's position that certain legal issues ought to be resolved before this case proceeds to an evidentiary hearing. Indeed, while Cinergy suggests that the Authority's oral ruling in the ITC^DeltaCom docket (03-00119) predetermines the outcome of any issues involving Section 271, BellSouth disagrees for a number of reasons. First, the

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Authority's oral ruling has not yet been reduced to writing. Thus, the Authority's rationale for its ruling is unclear and any subsequent motions for reconsideration have not yet been addressed. Second, the Authority's ruling is the subject of an open FCC proceeding. Third, of course, the Authority made clear that its deliberations were interim in nature and that no final determination had been made. Finally, there are a number of recent decisions addressing Section 271 that the Authority should consider as it revisits this issue.

The Washington Utilities and Transportation Commission, for example, held "we have no authority under Section 271 to require Qwest to include Section 271 elements, or pricing for such elements, in its interconnection agreement." *In re: Petition for Arbitration of Covad with Qwest*, Docket No. UT-043045, Order No. 06 (Feb. 9, 2005). Likewise, the Utah Public Service Commission held "Section 252 was clearly intended to provide mechanisms for parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the additional of new Section 251 obligations via incorporated by reference to access obligations under Section 271 or state law. [w]e therefore decline to require the inclusion in the proposed ICA of language referencing Qwest's Section 271 and state law unbundling obligations." *In re: Petition for Arbitration of Covad with Qwest*, Docket No. 04-2277-02 (Feb. 8, 2005).

Of course, the decisions of the Washington and Utah commissions are fully consistent with recent rulings from the Mississippi district court, *BellSouth v. Mississippi Public Serv. Com'n et al.*, Civil Action No. 3:05CV173LN (Apr. 13, 2005), ("§ 271 explicitly places enforcement authority with the FCC. It is the prerogative of the FCC to address any alleged failure by BellSouth to satisfy any statutorily imposed conditions to its continued provision of long distance service), the Kentucky district court, *BellSouth v. Cinergy et al.*, Civil Action No. 3:05-CV-16-JMH (Apr. 22, 2005), ("[t]he enforcement authority for § 271 unbundling duties lies with the FCC and must be challenged there first"), and the United States Court of Appeals for the Seventh Circuit (ruling that a decision of the Indiana Commission was preempted because that agency tried to "parlay its limited role in issuing a recommendation under section 271" into an opportunity to issue an order, ostensibly under state law, dictating conditions on the provision of local service) *Indiana Bell v. Indiana Utility Regulatory Com'n et al.*, 359 F.3d 493, 497 (7th Cir. 2004).

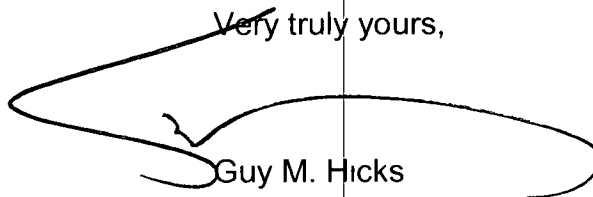
Cinergy closes its April 29, 2005 letter claiming that BellSouth has not received a response from BellSouth to Cinergy's April 14, 2005 "settlement offer." This claim is not accurate. Ms. Amy Hindman, the BellSouth employee that is Cinergy's negotiator, has

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repeatedly advised Cinergy that BellSouth was reviewing carefully Cinergy's April 14, 2005 proposal, and that a response would be forthcoming. That response was provided to Cinergy today, an entirely reasonable response time given the breadth of the matters included in Cinergy's proposal.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, consisting of a large, sweeping loop that starts under the word "Very", goes up and over the word "truly", and then loops back down to the word "yours".

Guy M. Hicks

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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